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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

REBIO RONNIE TOWNSEND,
Petitioner,
v.
AUDREY KING,
Respondent.¹

No. 2:13-cv-00859 GGH P
ORDER and
FINDINGS AND RECOMMENDATIONS

Introduction and Summary

Either petitioner is akin to Randle Patrick McMurphy of *One Flew Over the Cuckoo's Nest*, or he is, in fact, a person who has real mental infirmities and whose release from the California's Mentally Disordered Offender (MDO) program would make him a danger to the public. However, this habeas ruling will not determine that question on its merits as petitioner has clearly not raised a cognizable federal issue. The petition should be dismissed in part and summarily denied with respect to one MDO commitment proceeding.

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¹ Petitioner named his former state hospital (Atascadero) as respondent; however, his present custodian is Audrey King of Coalinga State Hospital. Audrey King is ordered substituted in place of Atascadero State Hospital pursuant to Fed. R. Civ. Pro. 25 (d)(1).

1 Procedural Facts

2 The basic procedural history is given in the most recent appellate opinion regarding
3 petitioner's status as an MDO²:

4 In 2008, defendant pled no contest to possession of a destructive device (a
5 Molotov cocktail) and admitted previously being convicted of a strike offense and
6 serving a term in prison. Consistent with his plea, defendant was sentenced to an
7 aggregate term of two years and eight months in state prison.

8 Defendant's custody was later transferred from the Department of Corrections and
9 Rehabilitation to the Department of Mental Health and in June 2011, the People
10 petitioned to extend defendant's commitment as a mentally disordered offender
11 pursuant to Penal Code section 2970. Those proceedings were continued until June
12 2012 when the People filed a second petition to extend defendant's commitment
13 for an additional year.

14 In support of the People's second petition, they submitted the affidavit of Jeanne
15 Garcia, M.D., medical director at Atascadero State Hospital. In Dr. Garcia's
16 opinion, defendant "qualifies for continued treatment ... in that his severe mental
17 disorder is not in remission and cannot be kept in remission." Attached to Dr.
18 Garcia's affidavit is a forensic report dated March 16, 2012, prepared by Brandi
19 Mathews, Ph.D.

20 To prepare her report, Dr. Mathews reviewed defendant's medical records and
21 numerous legal documents. Dr. Mathews also consulted with defendant's treating
22 psychologist. She intended to interview defendant but "treatment staff indicated
23 [defendant was exhibiting] recent increased levels of agitation...." Thus, Dr.
24 Mathews did not interview defendant.

25 As noted by Dr. Mathews, defendant was previously diagnosed with
26 schizoaffective disorder, bipolar type. Based on her review of defendant's
27 historical information and current "presentation" at Atascadero, Dr. Mathews
28 agreed with that diagnosis.

24 ² Like the federal government (see 18 U.S.C. section 4246), California has a proceeding wherein
25 a prisoner who is about to be released on parole or otherwise, may be found so dangerous to
26 others, if released, on account of a mental disease or defect, that instead of release, he will be
27 committed to a state hospital for a term of one year. If remission has not occurred, or is not
28 possible at the time of expiration of commitment, petitioner may be recommitted for another one
year period. See Cal. Penal Code section 2970. The person to be committed is represented by
counsel and is entitled to the protections of a jury trial to ensure that he meets the criteria of
commitment. See Cal. Penal Code section 2972.

1 In support of her opinion, Dr. Mathews cataloged defendant's "well-documented"
2 history of psychiatric treatment dating back to defendant's first psychotic break in
3 1978. She described defendant's history of "both psychotic and mood symptoms,"
4 which include, among other symptoms: auditory hallucinations, grandiosity,
5 decreased need for sleep, and paranoia. According to defendant's medical records,
6 the symptoms of his "severe mental disorder are not controlled by medication
7 and/or psychosocial support."

8 By reviewing defendant's recent progress notes at Atascadero, Dr. Mathews
9 learned that defendant continued to exhibit "significant mood symptoms." She
10 noted defendant continued to demonstrate paranoia and "mood lability." Other
11 progress notes reported defendant exhibiting "increased agitation" and irritability.
12 Defendant was further described in the progress notes as "[using] loud speech,
13 pacing the unit, and being intrusive with others." Based on her review of
14 defendant's records, and the reporting of defendant's "overt symptoms," Dr.
15 Mathews concluded that defendant's "severe mental disorder" was not in
16 remission, and as a result of defendant's severe mental disorder, he represented a
17 "substantial danger of physical harm to others."

18 To support her conclusions, Dr. Mathews outlined defendant's history of violent
19 and aggressive behavior. Dr. Mathews also described three more recent incidents
20 where defendant's aggression and agitation required him to be placed in restraints
21 and/or sequestered.

22 Dr. Mathews also indicated that defendant "has limited insight into his severe
23 mental disorder and the importance of medications." Defendant repeatedly refused
24 his medications so was twice placed on an involuntary medication order, and his
25 attendance at his treatment group meetings was "inconsistent." Defendant even
26 told his treating psychiatrist that he would not take his medications " 'on the
27 outside,' " because defendant believed " 'there [was] nothing wrong with [him].' "

28 In addition to his continued mood symptoms and violent conduct, Dr. Mathews
noted defendant's extensive history with drug and alcohol abuse, as well as his
lengthy criminal history (including five felony convictions). In Dr. Mathews's
opinion, defendant met the criteria for extending his commitment.

On August 10, 2012, a hearing was held on the People's petition. The People
submitted the matter based on the documents filed with the court. Defendant was
invited to speak on his own behalf but refused. Based on the petition filed by the
People, the recommendation of Dr. Garcia, and Dr. Mathews's March 16, 2012
report, the court ordered defendant's commitment extended for one year, to

1 November 8, 2013. Defendant appealed.

2 People v. Townsend, 2013 WL 2948118 (Cal. App. 2013)

3 Petitioner did have a violent past. In the early to mid- 1980s, he had been convicted of a
4 firearm assault on a police officer. See People v. Townsend, 171 Cal. App. 3d 900, 215 Cal.
5 Rptr. 120 (1985). With respect to the predicate offense which precipitated his first MDO finding,
6 possession of Molotov cocktails, petitioner demonstrated his dangerous tendencies and mental
7 problems. Petitioner had planted 12 Molotov cocktails on a neighbor's property to be used
8 against the "bad guys in the neighborhood." People v. Townsend, 182 Cal. App. 4th 1151, 1153,
9 106 Cal. Rptr. 3d 454 (2010). He carried Molotov cocktails on his person for protection because,
10 in a paranoid state, he imagined that his neighbors were engaged in systematic burglaries of many
11 houses in his neighborhood as well as other imaginary bad acts. Id.

12 Custody/Mootness/Successive/Status

13 As set forth above, petitioner was convicted in 2008, served that prison sentence into
14 2009, and was thereafter found to meet the MDO criteria in a trial type hearing in San Luis
15 Obispo. Because MDO commitments are for one year only terms, a new petition was filed in
16 Sacramento Superior Court for 2011 and 2012. In a proceeding which encompassed both
17 petitions for commitment, petitioner was again found unfit for release from the mental hospital.

18 As noted by respondent, it is difficult to discern in the instant petition what "conviction"
19 petitioner is challenging. Therefore, the undersigned will initially determine what proceeding
20 may be reviewed on its merits. In summary, one might initially think that because the sentence
21 for the criminal conviction had completely expired, petitioner, presently serving an MDO mental
22 commitment term, would not be "in custody" for habeas purposes of reviewing the 2008
23 conviction. For the reasons expressed below, the initial thought is incorrect. However, review of
24 the 2008 conviction is successive herein as this conviction has been reviewed in federal habeas
25 before. This court lacks authority, therefore, to adjudicate any claimed error in that criminal trial.
26 Further, petitioner is *not* in custody for his 2009 San Luis Obispo civil commitment. Petitioner is
27 "in custody" for his 2011/2012 commitments as he filed the instant federal petition before his

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1 2012 commitment expired. Nor is review of his now expired 2011, 2012 MDO terms moot.
2 Finally, with respect to the only proceeding that is properly before the court, the 2011/2012
3 Sacramento proceeding, petitioner has failed to demonstrate a cognizable federal issue.

4 “In custody” is a jurisdictional aspect of habeas corpus, and is the first line of inquiry if
5 there is any question about custody status. Bailey v. Hill, 599 F.3d 976, 978 (9th Cir. 2010).
6 Unless a subsequent custody bears a significant nexus to a past conviction, one is not in custody
7 for a past, expired conviction. The cases of Zichko v. Idaho, 247 F.3d 1015, 1020 (9th Cir.
8 2001), and Brock v. Weston, 31 F.3d 887 (9th Cir. 1994), stand for the proposition that a mental
9 commitment “conviction” bears a substantial nexus to a previous criminal conviction, if the
10 criminal conviction is a necessary predicate to the civil commitment. Such is the case here—the
11 MDO commitment is necessarily predicated on the 2008 “violent” criminal conviction. Thus,
12 petitioner is rendered “in custody” for purposes of attacking the prior criminal conviction.

13 However, to the extent that petitioner does challenge his 2008 conviction, his latest
14 petition is doubly successive, see Order of Nov. 12, 2013 in Townsend v. King, 2:12-cv-2350
15 GGH P, and cannot be entertained by this court unless the Ninth Circuit authorizes it to go
16 forward. 28 U.S.C. section 2244(b)(2), (3).³ While petitioner is deemed to be “in custody” for
17 the 2008 conviction, see supra, this does not mean that he can relentlessly challenge that
18 conviction every time he is recommitted under the MDO law.

19 Petitioner is “in custody” for the 2011-2012 MDO proceeding as he challenged this
20 proceeding in federal court before the expiration of the 2012 MDO term. Nor is petitioner’s
21 attack on his 2011-2012 MDO decision rendered moot simply because he is presently serving an
22 MDO term subsequent to the ones at issue here.⁴ The short duration of each commitment term
23 (one year) deprives petitioner of any realistic chance to have his issues heard in federal habeas.

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25 ³ The 12-cv-2350 case was termed successive by the undersigned as dismissals based upon
26 AEDPA limitations are dismissals on the merits for purposes of determining whether a
subsequent petition is successive. McNabb v. Yates, 576 F.3d 1028, 1030 (9th Cir. 2009).

27 ⁴ According to the most recent docket address, petitioner remains housed in a state hospital.
28 Therefore, he is either in process for another MDO hearing, or has again been found to be
dangerous if released from treatment.

1 See Hubbard v. Knapp, 379 F.3d 773, 777-78 (9th Cir. 2004) (SVPA case).

2 Finally, petitioner cannot challenge his San Luis Obispo 2009 MDO proceeding in that the
3 MDO proceedings in California are independent of one another, i.e., a more recent commitment
4 does not depend upon a prior commitment order. Thus, petitioner cannot be “in custody” for the
5 San Luis Obispo commitment. Burris v. Hunter, 290 F. Supp. 2nd 1097, 1101 (C.D. Cal. 2003).

6 When procedurally deficient convictions are purged, the only “conviction” at issue is the
7 Sacramento 2012 MDO court proceeding in which the state court consolidated the 2011 and 2012
8 petitions.

9 *No Cognizable Federal Issue Can Be Identified in Petitioner’s Challenge to the 2012 MDO*
10 *Proceeding*

11 One must specify a legal and factual basis for proceeding in federal habeas corpus. Bald
12 conclusions do not permit a habeas petition to go forward. “Conclusory allegations which are not
13 supported by a statement of specific facts do not warrant habeas relief.” Jones v. Borg, 24 F.3d
14 20, 26 (9th Cir. 1994). See also Cox v. Del Papa, 542 F.3d 669, 681 (9th Cir. 2008). Petitioner
15 must specify a factual basis which demonstrates a real possibility that petitioner is in custody in
16 violation of federal law. See Blackledge v. Allison, 431 U.S. 63, 75 & n.7, 97 S. Ct. 1621 (1977).

17 The petition regarding the MDO proceedings at issue here is the type for which no relief
18 can be granted. Ground One commences with the following: The Hospital thinks I’m dangerous;
19 of course I’m dangerous; I’m a veteran of the United States Army.... The remainder of Claim
20 One continues in that vein. Ground Two simply concludes that *all* the state hospital doctors lied
21 and slandered petitioner. For example: “[o]ne doctor David Finnell slandered my name by lying
22 and stated I was planning to go see Secretary of State Condoleeza- Rice, when I get out; I didn’t
23 say that, but why can’t I?” Petition at 7. And: “Doctor Joan Odom (Odom) lied and stated that I
24 said I was going to kill my drill-sergeant; and she said that I’d brandished a pistol at a fire
25 fighter⁵. These two are extremely skilled liars, and they’re good at it, too....” Ground Three
26 fares no better: Everyone from the court reporter to the judge, especially the judge know they’re

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28 ⁵ Petitioner has been convicted of a firearm assault on a police officer.

1 both lying and they did this to me 32 times....” Ground Four: “I’m a three-strike candidate and I
2 have been running into problems in this maximum-security psychiatric nightmare...your Honor,
3 they’re running a scam here; and they’re running a scam in Sacramento County and San Luis
4 Obispo Superior Courts.”

5 While petitioner points to specific, asserted “lies,” he presents no evidence from which it
6 might be inferred that the treating and reviewing doctors “lied.” As set forth by the California
7 Court of Appeal:

8 Defendant raised several issues in his supplemental brief regarding the process by
9 which his commitment was extended. In addition to defendant's over-arching
10 concern that people are telling lies about him, he contends it was error for the court
11 to rely on Dr. Mathews's report because Dr. Mathews never met defendant.

12 First, there is no evidence in the record that anything included in the record is
13 untrue, including the information contained within Dr. Mathews's report. Second,
14 as an expert, Dr. Mathews is permitted to form her opinion regarding defendant's
15 mental state based on information “made known to h[er] at or before the hearing,
16 whether or not admissible, that is of a type that reasonably may be relied upon by
17 an expert in forming an opinion upon the subject to which h [er] testimony
18 relates....” (Evid. Code, § 801, subd. (b).) Thus, Dr. Mathews was under no
19 obligation to interview defendant. Moreover, she formed her opinion regarding
20 defendant's mental status after reviewing treatment notes and medical records
21 prepared by defendant's treatment providers, as well as reports about defendant's
22 mental health prepared by other experts. Such reliance was entirely permissible.
23 (Ibid.)

24 People v. Townsend, 2013 WL 2948118 *2.

25 The undersigned finds that petitioner has failed to allege, *and present*, sufficient facts such
26 that it might be determined that there is a real possibility of constitutional error in his 2011/2012
27 MDO proceeding.

28 Conclusion

An MDO proceeding is a particularly important one in that successive commitments can
lead to indefinite detention in a state facility. However, the state procedures in petitioner’s 2011-
2012 case have not been put at issue in a cognizable way.

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Accordingly, IT IS HEREBY ORDERED:

1. Audrey King is substituted for the previous respondent, Atascadero State Hospital;
2. The Clerk shall assign a district judge to this case as both sides have not consented to the undersigned presiding pursuant to 28 U.S.C. section 636(c).

IT IS HEREBY RECOMMENDED that the petition be dismissed in part and summarily denied in part. Judgment should be entered for respondent. The undersigned finds that no Certificate of Appealability should issue in this case.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections shall be served and filed within fourteen days after service of the objections. Failure to file objections within the specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: May 27, 2014

/s/ Gregory G. Hollows

UNITED STATES MAGISTRATE JUDGE